

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
MACON DIVISION**

**DAVID ANTOINE LUSTER,**

**Petitioner,**

**v.**

**UNITED STATES OF AMERICA**

**Respondent.**

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**Civil Action No.  
5:03-CR-52 (HL)  
28 U.S.C. § 2255**

**ORDER**

Before the Court is the report and recommendation (Doc. 85) entered on April 13, 2010 of United States Magistrate Judge G. Mallon Faircloth, in which the Magistrate Judge recommends that Petitioner's Motion for Relief pursuant to Federal Rule of Civil Procedure rule 60(b)(5) (Doc. 82) be denied as moot, as frivolous, and for failure to state a claim.

The Petitioner has filed a response to the recommendation (Doc. 89) as permitted by 28 U.S.C. § 636(b)(1). The response, however, was filed over three months late. Nevertheless, the Court has reviewed the objection and made a *de novo* review of the portions of the recommendation to which Plaintiff objects.

After careful consideration, the Court accepts and adopts the findings, conclusions, and recommendations of the Magistrate Judge. Petitioner's Motion for Relief from Judgement (Doc. 82) is denied.

**SO ORDERED**, this the 29<sup>th</sup> day of September, 2010.

**s/ Hugh Lawson  
HUGH LAWSON, SENIOR JUDGE**

lmc